

67-19a-406 Procedural steps to be followed by aggrieved employee -- Hearing before hearing officer -- Evidentiary and procedural rules.

- (1)
 - (a) The administrator shall employ a certified court reporter to record the hearing and prepare an official transcript of the hearing.
 - (b) The official transcript of the proceedings and all exhibits, briefs, motions, and pleadings received by the hearing officer are the official record of the proceeding.
- (2)
 - (a) The agency has the burden of proof in all grievances.
 - (b) The agency must prove the agency's case by substantial evidence.
- (3)
 - (a) The hearing officer shall issue a written decision within 20 working days after the hearing is adjourned.
 - (b) If the hearing officer does not issue a decision within 20 working days, the agency that is a party to the grievance is not liable for any claimed back wages or benefits after the date the decision is due.
- (4) The hearing officer may:
 - (a) not award attorney fees or costs to either party;
 - (b) close a hearing by complying with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings Act;
 - (c) seal the file and the evidence produced at the hearing if the evidence raises questions about an employee's character, professional competence, or physical or mental health;
 - (d) grant continuances according to rule; and
 - (e) decide a motion, an issue regarding discovery, or another issue in accordance with this chapter.
- (5)
 - (a) A hearing officer shall affirm, rescind, or modify agency action.
 - (b)
 - (i) If a hearing officer does not affirm agency action, the hearing officer shall order back pay and back benefits that the grievant would have received without the agency action.
 - (ii) An order under Subsection (5)(b)(i) shall include:
 - (A) reimbursement to the grievant for premiums that the grievant paid for benefits allowed under the Consolidated Omnibus Reconciliation Act of 1985; and
 - (B) an offset for any state paid benefits the grievant receives because of the agency action, including unemployment compensation benefits.
 - (c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount of back pay and benefits awarded a grievant because of income that the grievant earns during the grievance process.

Amended by Chapter 109, 2013 General Session